IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.20/2002

Walty Gama,
C.Pr. No.768, Central Jail,
Aguada, S. Bardez, Goa. .... Petitioner.

V/s.
State of Goa, through the
Inspector General of Prisons,
Panaji, Goa. .... Respondent.

Ms. Asha Dessai, Advocate appointed under the Legal Aid Panel.

Mr. V.P. Thali, Addl. Advocate General with Ms. G. Pednekar, Addl. Govt. Advocate for the respondents.

CORAM : P.V. HARDAS, J.

DATE : JULY 5, 2002.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith by consent of parties.

2. This petition has been filed by the petitioner through Jail and in pursuance of the request of the petitioner, Ms. A. Dessai, learned Counsel has been appointed from the Legal Aid Panel to represent the petitioner.

3. This petition takes exception to the order 16.1.2002 passed by the Inspector General of Prisons, Panaji, Goa declining to grant parole to the petitioner.

4. The petitioner is convicted by the Sessions Judge, South Goa, at Margao on 4.3.1993 for an offence punishable under Section 302 of the Indian Penal Code and was sentenced to undergo Imprisonment for Life. Against this conviction and sentence, the petitioner filed Criminal Appeal No.17/93 before this Court and this Court by its Judgment dated 2.3.1994 dismissed the appeal, confirming the conviction and sentence. It appears that the Special Leave Petition filed by the petitioner before the Apex Court, was also dismissed on 16.10.1995.

5. The petitioner on 20.12.2001 applied for parole on three grounds, namely:- (1) that his father's 17th death anniversary mass service was to be held on 27.12.2001; (2) to see his old aged sick uncle and aunty; and (3) to meet his cousin coming from abroad. It appears that the Superintendent of Police, South Goa, Margao inquired in respect of the reasons for grant of parole and by his letter dated 2.1.2002, informed the Inspector General of Prisons, Panaji, Goa that his office was not in favour of grant of parole to the petitioner. The Superintendent of Police, in his report, dated 2.1.2002 has stated in respect of the first ground for parole, that the same had become infructuous, as the death anniversary mass service was already held on 27.12.2001. In respect of the second ground, it was stated that the petitioner had already visited his old

aged uncle and aunty while he was released on parole from 5.11.2001 to 19.11.2001. In respect of the third ground, it was stated that the cousin brother coming from abroad could visit the petitioner in the Central Jail, after taking permission from the Jail Authorities. It was also stated in the report that the petitioner, on completion of his parole granted to him earlier, had refused to surrender before the Central Jail. The Inspector General of Police, by his order dated 16.1.2002, declined to grant parole. The Inspector General of Police had made a reference to the fact that the Superintendent of Police, South Goa Margao, in his report dated 2.1.2002 had stated that the grounds on which the parole was sought, were not genuine.

6. The Order of the Inspector General of Prisons dated 16.1.2002 does not show that he has applied his independent mind while declining to grant parole to the petitioner. No reasons have been given in the said order as to why the Inspector General of Prisons felt that the grant of parole to the petitioner was not in public interest. Moreover, the second ground on which he was seeking parole was that the petitioner wanted to visit his aged sick uncle and aunty. From the report of Superintendent of Police, it does not appear that any inquiry was made to find out whether the uncle and aunty of the petitioner were sick.

7. The order impugned in the present petition suffers from total non-application of mind and, therefore, the impugned order dated 16.1.2002 is, hereby, quashed and set aside and the Inspector General of Prisons, Panaji is directed to decide the application of the petitioner for grant of parole, afresh within two weeks from the date of receipt of writ of this Court, if necessary, by calling for a report from the Superintendent of Police, South Goa, Margao.

8. Criminal Writ Petition No.20/2002 is, therefore, allowed. Rule made absolute in the above terms with no order as to costs.

P.V. HARDAS, J.

ssm.